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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,764

Applicant(s)

FLATT, JERROLD V.

Examiner

Robert D. Rines

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-18, 20-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-18, 20-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

[1] This communication is in response to the amendment filed 26 July 2006. It is noted that this application benefits from Provisional Patent Application Serial No. 60/246,241 filed 6 November 2000. Claims 4, 19, 24, 26, and 27 have been cancelled. Claims 1, 5, 6, 7, 18, and 25 have been amended. Claims 1-3, 5-18, 20-23, and 25 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

[2] Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Filler (United States Patent Application Publication #2001/0051881) in view of Bianco et al., (United States Patent Application Publication #2002/0082865).

[A] As per claim 25, Filler teaches a method of managing patient referrals, comprising: providing a web site accessible to a plurality of health care providers (Filler; paragraphs [0016] [0073] [0074]), the plurality of health care providers including a referring physician and a consulting physician (Filler; paragraphs [0028] [0029] [0032] [0047]); receiving a request on the web page from the referring physician for a patient consultation to be performed by the consulting physician on a patient (Filler; paragraphs [0016] [0025] [0073]); and notifying the consulting physician of the request for a patient consultation (Filler; paragraphs [0025] [0076]).

Applicant has amended independent claim 25 to include limitations previously set forth in dependent claims 26 and 27 (cancelled as indicated in the current/26 July 2006 response).

Applicant has amended independent claim 25 to further limit the claim by requiring: requesting an authorization number for the patient consultation from an insurer providing insurance to the patient; wherein the step of notifying the consulting physician is notifying the consulting physician according to a preferred mode of communications setting set by the consulting physician on the web site.

As per these elements, Filler teaches requesting an authorization number for the patient consultation from an insurer providing insurance to the patient (Filler; paragraphs [0026] [0073] [0081] [0082]). NOTE: Filler does not specifically request an "authorization number" with respect to information exchanged with an insurer. However, Filler clearly indicates "an insurer of the patient may also be notified about the diagnostic service utilizing the network to facilitate

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payment" (Filler; paragraph [0026]). The examiner is interpreting the above statement by Filler to encompass the applicant's desire to obtain "an authorization number" from the patient's insurer.

Filler fails to specifically disclose that communications occur via a preferred mode of communication.

However, Bianco et al. disclose a method wherein the step of notifying the consulting physician is notifying the consulting physician according to a preferred mode of communications setting set by the consulting physician on the web site (Bianco et al.; paragraphs [0081] [0135] and Figs. 24A-24C).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Filler with those of Bianco et al. Such combination would have resulted in a web-based medical services network that enabled physicians to access a physician web site system for the purpose of referring a patient felt to be in need of a diagnostic or medical service (Filler; paragraphs [0016] [0017]). Further, such a system would have enabled physicians to register and log in to the system via a physicians' registration web page (Bianco et al.; paragraph [0132] and Fig. 24A). The motivation to combine the teachings would have been to enable a physician register with the system and enter biographical profile information and practice information (Bianco et al.; paragraph [0132]) into a searchable physicians' database such that other users of the system could access a physicians directory to search for the physician by

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name, specialty, or geographical location (Bianco et al.; paragraph [0098]), and upon identifying an appropriate physician, users could contact and communicate with the physician via an electronic message system or other contact information as designated by the physician (Bianco et al.; paragraph [0135]). Further motivation to combine the teachings would have been to provide an interactive, electronic patient healthcare system providing a full array of education and preparation tools for guiding a patient through a medical event (Bianco et al.; paragraph [0010]).

Claims 26 and 27 have been cancelled.

[3] Claims 1-3, 5-18, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filler in view of Bianco et al., and further in view of Kiselik (United States Patent Application Publication #2001/0034631).

[A] As per (currently amended) claim 1, Filler teaches a method of managing patient referrals, comprising: providing a web site accessible to a plurality of health care providers (Filler; paragraphs [0016] [0073] [0074]); receiving a request for a patient consultation from a first health care provider to be performed by a second health care provider (Filler; paragraph [0025] [0076]), both the first health care provider and the second health care provider having a health care provider registration (Filler; paragraph [0016]); and notifying the second health care provider of the request for a patient consultation (Filler; paragraphs [0025] [0076]).

Applicant has amended independent claim 1 to include newly added limitation(s) and limitation(s) previously set forth in dependent claim 4 (cancelled as indicated in the current/26 July 2006 response). Applicant has amended independent claim 1 to further limit the claim by requiring: that notifying the second physician of the request for a patient consultation occurs according to a preferred mode of communication setting set by the second health care provider on the web site (newly added with respect to previously presented claim 1 and dependents) and further requiring receiving a peer rating from the first health care provider of the second health care provider (previously of dependent claim 4).

Filler fails to specifically disclose both a peer rating system and setting a preferred mode of communication.

Regarding " preferred mode of communication", Bianco et al. disclose a method wherein notification occurs according to a preferred mode of communication setting set by the second health care provider on the web site (Bianco et al.; paragraphs [0081] [0135] and Figs. 24A-24C).

Although Bianco et al. includes provisions for a patient review of received quality of care, Bianco et al. fails to specifically disclose physician-to-physician peer review/rating.

Regarding peer ratings, Kiselik discloses receiving a peer rating from the first health care provider of the second health care provider (Kiselik; Abstract and paragraphs [0059] [0072]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Filler and Bianco et al., with those of Kiselik. Such combination would have resulted in a health services network that enabled a physician to access a physician web site system for the purpose of referring a patient felt to be in need of a particular diagnostic or medical service (Filler; paragraphs [0016] [0017]) and select an appropriate physician, based on the physician's submitted personal and practice profile, from a physician's directory (Bianco et al.; paragraph [0132]) and contact the physician using contact information provided by the physician during registration with the system (Bianco et al.; paragraphs [0081] [0135] and Figs. 24A-24C). Such combination would have expanded on the physician and facility review functions of Bianco et al. (Bianco et al.; paragraph [0134]) such that a referring physician could view review/ratings of past performance of the physicians in the directory (Kiselik; paragraph [0004]). The motivation to combine the teachings would have been to effect rapid and accurate selection, by a referring physician, of a specialist or treating physician for a medical service and enable an evaluation based upon past performance of both physicians (Kiselik; paragraphs [0004] [0059]).

[B] As per claim 2, Filler teaches a method further comprising receiving a response from the second health care provider accepting or declining the request for a patient consultation (Filler; paragraphs [0076] [0047] [0073]).

[C] As per claim 3, Filler teaches a method further comprising scheduling a time for the patient consultation (Filler; paragraphs [0025] [0047]).

[D] Claim 4 is cancelled.

[E] As per (currently amended) claim 5, Kiselik teaches a method wherein the peer rating is anonymous (Kiselik; paragraph [0044]).

Applicant has amended dependent claim 5. Claim 5 previously depended from claim 4. In the present/26 July 2006 response, Applicant has indicated that dependent claim 5 now depends from independent claim 1.

[F] As per (currently amended) claim 6, Kiselik teaches a method wherein the peer rating is attributed to the first health care provider (Kiselik; Abstract and paragraphs [0059] [0072]).

Applicant has amended dependent claim 6. Claim 6 previously depended from claim 4. In the present/26 July 2006 response, Applicant has indicated that dependent claim 6 now depends from independent claim 1.

[G] As per (currently amended) claim 7, Kiselik teaches a method further comprising providing the peer rating to the second health care provider (Kiselik; Abstract and paragraphs [0059] [0072]).

[H] As per claim 8, Bianco et al., teaches a method further comprising providing a health care provider profile associated with a health care provider registration (Bianco et al.; paragraphs [0085] [0098] [0132]).

[I] As per claim 9, Filler teaches a method wherein the request for patient consultation includes patient demographic data (Filler; paragraph [0026]).

[J] As per claim 10, Filler teaches a method wherein the request for patient consultation includes insurance information (Filler; paragraphs [0026] [0047]).

[K] As per claim 11, Filler teaches a method wherein the request for patient consultation includes patient contact information (Filler; paragraph [0026]).

[L] As per claim 12, Filler teaches a method wherein the request for patient consultation includes appointment preference information (Filler; paragraph [0047]).

[M] As per claim 13, Filler teaches a method further comprising providing information concerning the request for patient consultation to an insurer (Filler; paragraph [0073]).

[N] As per claim 14, Filler teaches a method further comprising receiving notification of approval or denial from the insurer (Filler; paragraphs [0021] [0026] [0073]).

NOTE: Filler does not specifically utilize terms "approval" or "denial" with respect to information exchanged with an insurer. However, Filler clearly indicates "an insurer of the patient may also be notified about the diagnostic service utilizing the network to facilitate payment" (Filler; paragraph [0026]). The examiner is interpreting the above statement by Filler to encompass the applicant's desire to obtain "approval" or "denial" from the patient's insurer.

[O] As per claim 15, the method of claim 1 wherein the step of notifying is notifying via email (Bianco et al.; paragraphs [0081] [0109] [0135]).

[P] As per claims 16 and 17, while Bianco et al. indicates that email is primarily used to facilitate communications between and among users of the system (Bianco et al.; paragraph [0135]), Bianco et al., further indicates that "communication between the healthcare information provider system and patient and the medical practitioner may be established using any type of communication hardware and protocols which are already known in the art" (Bianco et al.; paragraph [0081]). The examiner interprets the above noted statement of Bianco et al., to be encompassing of the applicant's limitations of "notifying via fax" (claim 16) and "notifying via pager" (claim 17).

Regarding claims 2-3 and 5-17, the obviousness and motivation to combine as discussed with regard to claim 1 above are applicable to claims 2-3 and 5-17 and are herein incorporated by reference.

[Q] As per claim 18, Filler teaches a system for managing patient referrals, comprising: a web site accessible to a plurality of health care providers (Filler; paragraphs [0016] [0073] [0074]); and transmitting requests from at least one of the registered health care providers to at least one of the registered health care providers (Filler; paragraph [0025]).

Applicant has amended independent claim 18 to include limitations previously set forth in dependent claims 19 and 24 (cancelled as indicated in the current/26 July 2006 response). Applicant has amended independent claim 18 to further limit the claim by requiring: a peer review component for providing feedback to a patient consult by a consulting health care provider from a referring health care provider; a mode of communication preference set by a referring health care provider and provided to a consulting health care provider.

As noted in Examiner's rejection of claim 1 above, Filler fails to disclose setting a preferred mode of communication and both Filler and Bianco et al. fail to disclose physician-to-physician peer review/rating.

Regarding "a mode of communication preference", Bianco et al. disclose a method wherein notification occurs according to a preferred mode of communication setting set by the second health care provider on the web site (Bianco et al.; paragraphs [0081] [0135] and Figs. 24A-24C).

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Regarding "a peer review component", Kiselik discloses a method including a peer review component for providing feedback to a patient consult by a consulting health care provider from a referring health care provider (Kiselik; Abstract and paragraphs [0059] [0072]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Filler and Bianco et al., with those of Kiselik. Such combination would have resulted in a health services network that enabled a physician to access a physician web site system for the purpose of referring a patient felt to be in need of a particular diagnostic or medical service (Filler; paragraphs [0016] [0017]) and select an appropriate physician, based on the physician's submitted personal and practice profile, from a physician's directory (Bianco et al.; paragraph [0132]) and contact the physician using contact information provided by the physician during registration with the system (Bianco et al.; paragraphs [0081] [0135] and Figs. 24A-24C). Such combination would have expanded on the physician and facility review functions of Bianco et al. (Bianco et al.; paragraph [0134]) such that a referring physician could view review/ratings of past performance of the physicians in the directory (Kiselik; paragraph [0004]). The motivation to combine the teachings would have been to effect rapid and accurate selection, by a referring physician, of a specialist or treating physician for a medical service and enable an evaluation based upon past performance of both physicians (Kiselik; paragraphs [0004] [0059]).

[R] Claim 19 has been cancelled.

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[S] As per claim 20, Bianco et al. teaches a system wherein the at least one registration web page includes a physician registration web page (Bianco et al.; paragraph [0132]).

[T] As per claim 21, Bianco et al. teaches a system wherein the at least one registration web page includes a clinic registration web page (Bianco et al.; paragraphs [0126] [0132]).

[U] As per claim 22, Bianco et al. teaches a system wherein the at least one registration web page includes a department registration web page (Bianco et al.; paragraphs [0126] [0132] [0134]).

[V] As per claim 23, Bianco et al. teaches a system further comprising a patient registration web page (Bianco et al.; paragraphs [0103] [0104]).

Regarding claims 20-23, the obviousness and motivation to combine as discussed with regard to claim 18 above are applicable to claims 20-23 and are herein incorporated by reference.

[W] Claim 24 has been cancelled.

Response to Remarks

[4] Applicant's remarks filed 26 July 2006 have been fully considered but they are not persuasive. The remarks will be addressed below in the order in which they appear in the response filed 26 July 2006.

Applicant submits that Filler is not legal prior art under 35 U.S.C. 102(e). Applicant submits that the present application was filed on November 6, 2001, and is entitled to the priority date of November 6, 2000. Applicant contends that the priority date of Filler (December 22, 1999) is not valid because the provisional application does not disclose the subject matter which the Examiner relies upon in making the present reactions.

In response, Examiner has further reviewed Filler's Provisional Applicant (US Provisional Application #60/171,446) and submits that Filler does provide adequate disclosure of the features required for Examiner's rejections under 35 U.S.C. 102(e) and 35 U.S.C. 103(a) as set forth in the previous Office Action (mailed 26 January 2006). Of note, although Applicant contends that: "The provisional application (of Filler), which is a mere four pages in length, has been obtained and reviewed and it is respectfully submitted that that provisional application does not provide a basis for the Examiner's rejections....", Applicant provides no support for the above noted statement and, in particular, has not submitted which limitations claimed by Applicant are not evident in the provisional disclosure of Filler.

In further response, Examiner directs Applicant's attention to U.S. Provisional Application For Patent #60/171,446, pgs. 1 and 2 in which Filler discloses a system-enabled method that enables enrolled physicians to securely access a physician web site via public key encryption system using Virtual Private Network (VPN) software. Filler further specifies that the purpose of the website is to allow a physician to refer a patient in need of a diagnostic or medical service to an appropriate health care professional or facility. Filler additionally provides for patient scheduling of appointments and physician and patient access to data via the website enabled network.

Examiner respectfully submits that the above noted passages of Filler provide adequate support for the Examiner's previous rejections of the present application as set forth in the previous Office Action (mailed 26 January 2006).

Applicant remarks that the combination of Filler and Bianco et al., does not describe the process defined by claims 1-3, 8-18, 20-24, and 27 of present application.

Specifically, Applicant remarks:

"Bianco et al. simply does not understand the dynamics of the physician relationships and does not disclose that the website provides for allowing a consulting physician to set a preferred mode of communications. The fact that Bianco et al. discloses that there are many different types of

communication that can be used does not disclose that a consulting physician can set a preference mode of communication."

In response, Examiner directs Applicant's attention to the teachings of Bianco et al. at paragraphs [0081] and [0135] and Figs. 24A, 24B, and 24C. In the above noted passages, Bianco et al. describes a system-enabled method that facilitates communication by email and a discussion center (i.e. chat). As previously noted, Bianco et al. discloses numerous mechanisms for enabling communications and messaging between physicians/system users employing electric cable, fiberoptic cable, and wireless technologies. In figures 24A-24C, Bianco et al. depict the physician registration pages that require the physician to enter various contact information including mailing address, contact phone numbers, and email address. Additionally, Fig. 24C depicts a "General Comments" area for physicians to type in additional information. In light of the above, Examiner submits that Bianco et al. does disclose the feature of enabling a physician to set a "preferred mode of communication".

Firstly, Bianco et al. provides for the physician to enter an email address indicating to the Examiner that the physician could enter a general use email, a work associated email address, or an email address set up exclusively to service messaging through the system. In other words, email address selecting in Bianco et al. is a user choice made to define the preferred mode of communication as the physician sees fit.

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Secondly, as noted previously, Bianco et al. disclose the use of multiple communication hardware configurations. This indicates to the Examiner the system of Bianco et al., intends to employ messaging formats that utilize these technologies. As above, Examiner's interpretation of the flexibility of Bianco et al. in this regard enables a physician entering a phone number could set a preference by inserting a phone number that accesses a beeper (Examiners example). Like with email, it is the physician's choice as to which phone number to enter into the data field thereby creating an opportunity for the physician to "set a preference".

Lastly, Examiner directs attention to the "General Comments" field depicted in Bianco et al. Fig. 24C. Examiner interprets the inclusion of this field within the contact information/registration form to provide opportunity for the physician to provide additional instructions such as office hours or preferred contact hours etc., Thereby presenting another opportunity for a physician to set a communication preference.

Examiner respectfully submits that the previously applied passages of Bianco et al., when considered in view of the collective teachings of Bianco et al., and particularly those depicted by Figs. 24A-24C amply meet Applicant's limitations of setting a preferred mode of communication, as claimed in the present response.

Applicant remarks that the combination of Filler, Bianco et al., and Kiselik does not describe the process defined by claims 5-7 of present application.

Specifically Applicant remarks:

"Kiselik discloses a rating system but not in the claimed context."

In response, Examiner directs Applicant's attention to the teachings of Kiselik at paragraphs [0059] and [0072]. In the above noted passages, Kiselik clearly describes a physician referral system that provides for physicians to rate the performance of the other physician. Although Applicant submits that the Kiselik rating system is not in the claimed context, Examiner fails to see a distinction regarding the context of present application/response.

In conclusion, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 26 July 2006 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Filler, Bianco et al., and Kiselik, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (mailed 26 January 2006), and incorporated herein.

Conclusion

[5] **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Rines whose telephone number is 571-272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RDR

 10/29/06*Primary*C. LUKE GILLIGAN
PATENT EXAMINER